

Message Text

PAGE 01 NATO 03367 201751Z

51
ACTION EUR-12

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E.O. 11652: N/A
TAGS: MARR NATO
SUBJECT: REVISION TO INVITATION FOR BID (IFB) FOR NICSMA
INITIAL VOICE SWITCHED NETWORK (IVSN) PROCUREMENT

SUMMARY. NICSMA HAS ISSUED REVISED RIGHTS IN DATA CLAUSE TO IVSN IFB. ACTION REQUESTED: REQUEST US BIDDING FIRMS BE CONTACTED TO DETERMINE IF NEW CLAUSE IS ACCEPTABLE. END SUMMARY.

1. AT BIDDERS' CONFERENCE ON IVSN PROGRAM, GENERAL TELEPHONE & ELECTRONICS (GTE) POSED THE FOLLOWING QUESTION CONCERNING THE MATTER OF RIGHTS IN DATA: QUOTE.

QUESTION NO. 67. ARTICLE 36-RIGHTS IN DATA
THE RIGHTS IN DATA CLAUSE IN THE IFB IS, IN MANY WAYS, SIMILAR TO THE OLD US ARMED SERVICES PROCUREMENT REGULATION TECHNICAL DATA CLAUSE, AND AS SUCH, IS UNSUITED FOR STANDARD COMMERCIAL ITEMS. IN PARTICULAR THE CATEGORIES OF DATA RIGHTS (LIMITED RIGHTS AND UNLIMITED RIGHTS) ARE GENERALLY WHOLLY UNACCEPTABLE TO COMMERCIAL COMPUTER MANUFACTURERS, PARTICULARLY IN REGARD TO COMPUTER SOFTWARE. IN RECOGNITION OF THIS FACT, THE ASPR WAS RECENTLY REVISED TO INCLUDE A NEW CATEGORY CALLED "RESTRICTED RIGHTS" APPLICABLE TO COMPUTER SOFTWARE. THESE RESTRICTED RIGHTS HAVE BEEN ADEQUATE FOR US GOVERNMENTAL PURPOSES AND UNCLASSIFIED

PAGE 02 NATO 03367 201751Z

MORE READILY OBTAINABLE FROM THE COMPUTER SUPPLIERS. IT IS SUGGESTED THAT SUCH A CATEGORY OF RIGHTS BE ESTABLISHED FOR NICS PROCUREMENT WHICH WILL ENABLE ALL SUPPLIERS TO BID THE FURNISHING OF ALREADY DEVELOPED TECHNOLOGY AND SOFTWARE RATHER THAN IMPOSE

UPON NICS THE REQUIREMENT AND EXPENSE FOR SPECIFIC DEVELOPMENT.
END QUOTE.

2. NICSMA WAS NOT IN POSITION TO ANSWER THIS QUESTION AT THE CONFERENCE, BUT HAS NOW PROVIDED US WITH A PROPOSED REVISION TO ARTICLE 36 OF THE IVSN INVITATION FOR BID WHICH NICSMA HOPES WILL RESOLVE PROBLEM. FULL TEXT OF ARTICLE, WHICH COMPRISES SOME SEVEN PAGES, IS BEING FORWARDED VIA AIR MAIL TO MR. JOSEPH MILLER, OASD/ISA AND MR. GERALD STUMP, DOC, FOR DISTRIBUTION TO INTERESTED PARTIES.

3. IT WOULD APPEAR THAT NICSMA HAS FOLLOWED VERBATIM THE TEXT OF SECTION 7-104.9, RIGHTS IN DATA AND COMPUTER SOFTWARE, OF THE US ARMED SERVICES PROCUREMENT REGULATION (ASPR), WITH ONLY ONE SIGNIFICANT EXCEPTION. PARA (A) (9) (IV) OF THE BASIC DATA CLAUSE, WHOSE TEXT IS GIVEN IN SECTION 7-104.9(A) OF THE ASPR, HAS BEEN MODIFIED TO READ AS FOLLOWS: QUOTE. MODIFY COMPUTER SOFTWARE, OR COMBINE IT WITH OTHER SOFTWARE, SUBJECT TO THE PROVISION THAT THOSE PORTIONS OF THE DERIVATIVE SOFTWARE INCORPORATING RESTRICTED RIGHTS ARE SUBJECT TO THE SAME RESTRICTED RIGHTS. THIS PROVISION INCLUDES THE PURCHASER'S RIGHT TO ENGAGE A THIRD PARTY TO EFFECT MAJOR MODIFICATIONS TO THE IVSN SOFTWARE IN ORDER TO ACCOMMODATE FUTURE REQUIREMENTS. SUCH A CONTRACT WITH A THIRD PARTY WOULD ONLY BE ALLOWED TO MAKE USE OF (SIC) THE KNOWLEDGE OF THE IVSN SOFTWARE FOR THE SPECIFIC PURPOSES STATED WITHIN SAID CONTRACT; AND WOULD BE SUBJECT TO A PROHIBITION AGAINST FURTHER USE, RELEASE OR DISCLOSURE; END QUOTE. NOTE: WE HAVE CALLED TO NICSMA'S ATTENTION ALTHOUGH INTENT IS CLEAR PHRASING OF LAST SENTENCE ABOVE NEEDS IMPROVEMENT.

4. WE HAVE DISCUSSED THIS ADDITION TO THE ASPR LANGUAGE WITH NICSMA. REASON GIVEN FOR CHANGE IS NICSMA CONVICTION THAT IT WILL BE NECESSARY FOR NODES CONTRACTOR, OR THIRD PARTY SOFTWARE HOUSE, TO HAVE ACCESS TO AND POSSIBLY MODIFY IVSN SOFTWARE, IN ORDER TO INSURE COMPATIBILITY WITH NODES SOFTWARE, SINCE NICSMA WILL NOT HAVE ADEQUATE IN-HOUSE CAPABILITY FOR THIS UNCLASSIFIED

PAGE 03 NATO 03367 201751Z

PURPOSE.

5. MR. J. GALLAGHER, OF GTE SYLVANIA, NEEDHAM MASS., HAS ADVISED US THAT THIS SUBJECT IS MATTER OF CONCERN TO GTE AND COULD AFFECT BID DECISION. WE HOPE THAT NICSMA ADOPTION OF ASPR LANGUAGE, WITH ESSENTIALLY ONLY THE ONE CHANGE NOTED ABOVE, WILL RESOLVE PROBLEM. REQUEST YOU CONTACT GTE, AS WELL AS OTHER US BIDDERS ON THIS PROJECT, TO DETERMINE IF REVISED ARTICLE 36 IS ACCEPTABLE, AND ADVISE US OF RESULTS OF SURVEY. STREATROR

UNCLASSIFIED

<< END OF DOCUMENT >>

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